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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 391

UNITED STATES OF AMERICA,
Petitioner,

v.

AUSTIN J. TOBIN,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

THOMAS E. DEWEY,
EVERETT I. WILLIS,
LINO A. GRAGLIA,
MERTON SARNOFF,
40 Wall Street,
New York 5, N. Y.

SIDNEY GOLDSTEIN,
111 Eighth Avenue,
New York, N. Y.
Attorneys for Respondent.

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

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The petition for certiorari asks this Court to review a unanimous decision of the Court of Appeals for the District of Columbia Circuit which decided only a question as to the proper interpretation of a resolution of the House of Representatives. The resolution authorized the Judiciary Committee to investigate the "activities and operations" of interstate compacts.* It was intended for a single investigation relating to the compacts creating the Port of New York Authority. A Subcommittee of the Judiciary Committee sought to conduct an unlimited investigation into the Authority's internal administrative and decision-making processes, as well as its activities and operations, and issued

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* H. R. Res. 530, 86th Cong., 2d Sess. (1960).

a subpoena calling for virtually all the files of the Authority. On the return date of the subpoena the Chairman of the Subcommittee stated that the purpose of the investigation was to consider whether to "alter, amend, or repeal" the consent of the Congress to the compacts which created the Authority. No such purpose had been stated to the House or was referred to in the resolution. Nor had the House been advised that the Subcommittee intended to investigate the internal administration of the Authority.

The court below found that the authorizing resolution, fairly construed, was intended to authorize an investigation limited to actual activities and operations and that such construction would avoid adjudicating serious constitutional questions. Accordingly, the court held that the Authority had fully complied with all authorized demands of the subpoena when it voluntarily furnished seven crates of materials showing all the actual activities and operations of the Authority.

STATEMENT

Respondent, Executive Director of the Port of New York Authority (the Authority), is a career public servant, employed by the Authority for more than 34 years (R. 9). This criminal proceeding was brought because at a hearing of Subcommittee No. 5 of the House Judiciary Committee (the Subcommittee) Respondent, in obedience to the written instructions of the Governors of New York and New Jersey and the Authority's Board of Commissioners, declined to produce confidential work papers and other internal files called for by a Subcommittee subpoena.

The Authority was created by the States of New York and New Jersey for the purpose of acting as "an instrumentality or agency of the two States" to develop and coordinate the terminal and transportation facilities of the

Port of New York (Deft. Ex. A, pp. 7-22, 27-60). The Compacts establishing the Authority were consented to by Congress by two joint resolutions approved by the President on August 23, 1921 and July 1, 1922.*

The Authority consists of 12 Commissioners, 6 appointed by each Governor (R. 15). The powers, duties and responsibilities of the Authority are derived from and controlled by the two States and all the actions of the Authority are subject to veto by either Governor** (R. 18-21).

In March 1960, Congressman Celler, Chairman of both the House Judiciary Committee and the Subcommittee, directed the Committee staff to undertake a study of the Authority (R. 108). Over the ensuing 12-week period, the Authority voluntarily furnished the seven man investigating staff of the Subcommittee with voluminous documents showing its activities and operations. Files relating to its internal administration, however, were withheld pending a decision by the Governors. (R. 138, 142-50, 260-67)

On June 15, 1960 Respondent, the Chairman of the Authority's Board of Commissioners and the Secretary of the Authority were served with identical subpoenas (R. 154-55, 162-63, 172-73). The subpoenas contained no limitation on the period for which documents were to be produced, but were later restricted to a 14½ year period (R. 156, 164, 174). The scope of the subpoenas was so broad that compliance would have required the production of whole rooms full of documents and would have removed virtually all the files of the Authority. (R. 37, 39)

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* 42 Stat. 174 (1921); 42 Stat. 822 (1922).

** N. Y. Sess. Laws 1927, ch. 700, as amended, N. Y. Sess. Laws 1956, ch. 215; N. J. Rev. Stat. 32:2-6, -9 (1937).

The Action of the Governors.

On June 23, 1960, at a meeting of Governors Rockefeller and Meyner, the State Attorneys General, Commissioners of the Authority, Respondent and others, telegrams were prepared and sent by the Governors to all members of the Judiciary Committee requesting adjournment of the return date of the subpoena and

> "... an opportunity at a mutually convenient date to meet with the Judiciary Committee to present for your consideration the deep concern of our respective States over the grave questions of constitutional principle arising from Subcommittee 5 subpoena of internal memoranda, worksheets and other documents of our local port agency, the Port of New York Authority. Most serious questions of constitutional propriety are at stake, involving upon our parts the fundamental sovereignty of the States. I believe these issues of constitutional principle are so important that they should be the subject of thoughtful discussion and consideration between the Members of the Judiciary Committee and the Chief Executives of the two States." (R. 29, 279-80).

By reply telegram Chairman Celler rejected the request of the Governors for an adjournment of the subpoena return date and an opportunity to meet with the Committee (R. 281). By identical letters of June 25, 1960, the Governors instructed the Commissioners from their respective States to direct Respondent and the other Authority witnesses to renew, at the return date of the subpoena, the request for an adjournment and, if refused, to decline to produce the internal memoranda, worksheets and other internal materials called for by the subpoena (R. 187-91). Thereupon the Board of Commissioners met and formally directed Respondent to comply with the Governors' instructions (R. 278).

The June 29th Hearing.

On June 29, 1960, Respondent, Board Chairman Colt and the Authority's Secretary, accompanied by the Attorneys General of the two States and members of the Authority's legal staff, appeared at the hearing. The purpose of the investigation, as stated by the Chairman at the opening of the hearing and repeated by Subcommittee counsel after an objection of pertinency had been made, was as follows (R. 112-13, 204):

> "The purpose of the investigation is to ascertain conformance or non-conformance of the Port of New York Authority with the congressionally imposed limitations on its powers and the extent and adequacy with which the authority is carrying out its duties and responsibilities under the congressionally approved compacts *in order to determine whether Congress should legislate 'to alter, amend, or repeal,' its resolutions of approval.*"* (Emphasis supplied)

Respondent produced approximately seven packing cases of documents and offered to "answer any questions which the committee may choose to ask" relating to the stated purpose of the investigation (R. 34, 36, 199). However, Respondent and the other witnesses, acting in obedience to the instructions of the Governors and the Board, and objecting to the pertinency of the documents demanded, did not produce documents relating to the

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* Petitioner conceded in its brief in the District Court that this was the stated subject matter under investigation. The District Court, however, asserted a vastly broader subject matter in its opinion and on that basis convicted Respondent. In the Court of Appeals, Petitioner abandoned the subject matter stated to Respondent by Chairman Celler and adopted the District Court's expanded version. Petitioner is apparently prepared (fn. 5, p. 17) to advance a third and even broader subject matter in this Court. *Cf. Russell* v. *United States*, 369 U. S. 749, 759, 766-68 (1962).

internal administration of the Authority (R. 33, 187-91, 199-200).*

Chairman Celler ruled that each of the witnesses was in default and then, for the first time and as "a matter of grace", permitted the Attorneys General of the States and the General Counsel of the Authority to make statements (R. 216-17). They pleaded with the Subcommittee to afford the Governors an opportunity to be heard before ruling the witnesses in default. They pointed out the confidential nature of many of the documents demanded and the serious effect of the demand on the internal administrative affairs of the States and on the use of interstate compacts by states. They objected that with reasonable effort on both sides the matter could be satisfactorily adjusted. They urged that the Subcommittee, in the interest of preserving the balance of the federal system, avoid precipitating a clash of federal and state sovereignties. (R. 218-31, 238-41) Their pleas were summarily rejected; the Chairman ruled that "the judgment of default must stand and will not be deferred" (R. 222).

Later Proceedings.

On August 23, 1960, the House cited Respondent for contempt. On November 25, 1960, Petitioner initiated contempt proceedings against Respondent by filing an information in the District Court (R. 1-2). The information contains no statement whatever of the subject matter of the investigation and no charge that the documents demanded were pertinent.

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* Among the types of documents withheld were confidential reports of Respondent to the Commissioners, reports on private conversations with and views of the Governors, reports on the character and reputation of individuals and businesses, legal memoranda and opinions, documents containing tentative views and recommendations of the Authority's staff, salary forecasts and information on real estate in which the Authority might be interested (R. 36-44).

Respondent was tried by the District Court without a jury and, on June 15, 1961, was convicted.

The Court of Appeals for the District of Columbia Circuit unanimously reversed Respondent's conviction, holding that the Subcommittee had not been authorized by the House to conduct the investigation attempted. Petitioner filed a petition for rehearing of the appeal *en banc* which was denied on July 2, 1962.

REASONS FOR DENYING THE WRIT

The question decided by the court below is not of a character warranting review by this Court. Petitioner's arguments to the contrary are essentially the same as those it advanced in moving for a review by the full Court of Appeals of nine Judges, *en banc*.

I.

The fact that the House cited Respondent for contempt is not a ground for granting certiorari.

Petitioner, citing *United States* v. *Rumely*, 345 U. S. 41 (1953), seeks a writ here on the ground that the court below rejected the view of the Subcommittee's authority adopted by the House in citing Respondent for contempt. This action of the House was long after the original authorizing resolution and after Respondent's refusal to comply with the Subcommittee's demands. Actually, the *Rumely* case settled the irrelevance of such "*post litem motam*, self-serving declarations" and held that "Rumely's duty to answer must be judged as of the time of his refusal" (345 U. S. at pp. 47-48).

Since no contempt case can arise without a citation for contempt by the House or Senate, Petitioner is arguing,

in effect, that a writ of certiorari is automatic in every case where a contempt conviction is reversed. That there is no such rule is apparent from the fact that, after the *Rumely* decision, certiorari was denied in *Brewster* v. *United States*, 255 F. 2d 899 (D. C. Cir.), *cert. denied*, 358 U. S. 842 (1958), where the Court of Appeals had held an investigation invalid as exceeding the authorizing resolution although the Senate had issued a citation for contempt.

It is clear, therefore, that review by this Court of contempt of Congress cases is governed by the same considerations applied in other cases. These considerations demonstrate that review is not warranted here.

II.

The issues presented below are unlikely to arise in any other case.

This case is unique and dependent on its own peculiar facts and circumstances.

The history of this dispute is a history of individualized attack on the Authority. As Petitioner points out (p. 17), the authorizing resolution was obtained on the express assurance by its sponsors that it would be used only "to look into one particular State's compact". Petitioner has thus cut the ground from under its own argument that the decision below may affect investigations relating to other compacts or investigations not relating to a compact at all. Contrary to its contention (p. 14), this was an *ad hoc* resolution if ever there was one.

The resolution in question is not, as Petitioner contends (p. 14), a "continuing authorization of investigation". It was first adopted on June 1, 1960 during the 86th Congress and under the rules of the House had no continuing effect beyond the term of that Congress.* A similar resolution was

* 106 CONG. REC. 11593-94 (1960).

adopted by the 87th Congress prior to the decision of the District Court in this case.* Regardless of the outcome of this litigation, the resolution will expire at the end of this year and will not be in effect in the next Congress unless readopted.

Even if investigations of other interstate compact agencies should be undertaken, there is no reason to assume that the questions of Congressional power raised below would have to be resolved in the courts. Any such investigation would normally, and properly, be pursued under the enumerated powers, such as those relating to interstate commerce and national defense, to which all compact agencies as well as single-state agencies are subject, not by the extraordinary assertion of a power to amend or repeal a compact consent.** Moreover, it is not lightly to be supposed that the spirit of cooperation and reasonable adjustment of conflicting interests which has typified federal-state relations in the area of interstate compacts will not prevail. It is equally unlikely that the reasonable pleas of the Governors of states for an opportunity to meet with a Congressional committee to resolve such conflict will be refused.

In these circumstances, the decision below has relevance to this case alone. It establishes no "rule of continuing importance" (Pet. p. 12), but merely gives effect, in the circumstances of this unique case, to settled principles of construction giving legislative language its ordinary and natural meaning and preferring a fair construction which avoids constitutional questions to one which raises them.

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* H. R. Res. 56, 87th Cong., 1st Sess. (Feb. 9, 1961).

** As Respondent urged and the court below pointed out (Pet. App. A. pp. 33-34), with these plenary powers continuously available to it, Congress has abundant authority to prevent any activities of compact agencies from doing violence to areas of federal concern.

III.

The decision does not impede the exercise by Congress of its powers of investigation.

Petitioner's contention that the decision below will unduly burden and impede Congressional investigations has no substance or reality. Petitioner argues as though the court had actually decided a constitutional question of Congressional power. It did nothing of the sort. The court held nothing about the power of Congress to investigate, either under the Compact Clause or under the enumerated powers.* It merely found that the unlimited investigation attempted was not authorized.

In declining to decide the constitutional questions, the court followed the well established rule of judicial restraint.** The sole "burden" on Congress is that of using clear and unambiguous language in the authorizing resolution. What would truly be an impediment to the legislative function would be to decide far reaching challenges to Congressional power in an academic setting without any clear indication that the power had even been asserted by the Congress.

Petitioner argues (pp. 20, 24-25), however, that an unambiguous resolution would be difficult to draft. This

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* Referring to the constitutional doubt expressed by the court below, Petitioner contends (pp. 22-23) that this will somehow prevent Congress from informing itself as to the functions of other compact agencies. Petitioner reads more into the court's opinion than is there. The doubt related solely to an unusual investigation of unlimited extent by a Subcommittee asserting an alleged "implied" power to amend or repeal a compact clause consent. There was no question in the case as to the customary type of investigations by Congress pursuant to its enumerated powers for a legitimate legislative purpose.

** The rule is even more applicable to resolutions than to formal legislation. *Rumely* v. *United States*, 345 U. S. 41, 45-46 (1953).

alleged difficulty cannot be taken seriously. Congressional mastery of English is not so limited that the House could not easily express an intention to authorize the Committee to conduct what the petition itself characterizes (in language not contained in the resolution) as a probe of the "internal workings" of this bi-state agency. If the House wishes to override the construction placed on the resolution by the Court of Appeals, and to authorize the Subcommittee's unprecedented investigation regardless of the constitutional questions involved, it need only add a few words clearly indicating such intent. If "the pressure of other legislative business" prevents the House from doing so, as Petitioner suggests (p. 13), it can only be because the House is not interested in forwarding the kind of investigation upon which the Subcommittee embarked.

Obviously the resolution would not have to list "particular documents" (Pet. p. 20) and "every particular kind of evidence in specific detail" (Pet. p. 24). All that is necessary is to make clear the scope of the investigation. A subpoena for all evidence relevant to that investigation would then have been authorized.

Petitioner also states (p. 25) that the decision below results in "delay and uncertainty" as to the power of Congress to amend or repeal a compact consent. This is simply an expression of disagreement with the rule of judicial restraint which avoids unnecessary constitutional adjudication. Every rejection of an opportunity to decide a constitutional question results in delay in decision of that question and uncertainty as to its eventual resolution, but the wisdom of the rule has been firmly established by long experience.

The implication of Petitioner's argument is that the observations of the court below as to the power of Con-

gress to amend or repeal a compact consent will cause chaos and consternation in Congress. This is hardly likely. The Senate Judiciary Committee concluded four years ago that Congress has no power to amend or repeal consent to a compact, and its conclusion was buttressed by a formal opinion of the Attorney General of the United States to that effect.*

Finally, Petitioner argues (pp. 19, 21) that under the decision below any witness in an investigation of the operations of a compact agency is free to withhold information from Congress if he can present a "plausible argument" for narrowing the authorizing resolution. If this means that where the resolution is ambiguous and subject to a fair interpretation avoiding constitutional questions, a state official will not be sentenced to jail for adopting that interpretation, then the statement is correct. Under the court's decision here it can mean no more.

IV.

The decision of the Court of Appeals is clearly correct.

Petitioner cannot question these basic facts:

1. Never before has a committee of Congress attempted to conduct an investigation of unlimited scope and depth into the confidential work papers and internal administrative processes of a state agency.

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* S. Rep. No. 1367, 85th Cong., 2d Sess. 2, 18-19 (1958). See also Conference Report, *Statement of the Managers on the Part of the House*, H. R. Rep. No. 2234, 85th Cong., 2d Sess. 4 (1958). These Reports related to a boundary compact between Oregon and Washington. The Senate Report recommended deletion, as unconstitutional, of a purported reservation in the Congressional consent resolution of a right to alter, amend or repeal the consent.

2. There is not one line in the Congressional Record to indicate that prior to the adoption of H. R. Res. 530 on June 1, 1960 the House of Representatives was ever told anything about the scope of the contemplated investigation or that documents relating to the internal administrative processes of the Authority had been demanded and refused.

3. The investigation attempted was totally foreign to the traditional concern of the Judiciary Committee with interstate compacts.*

It was in the light of these indisputable facts that the court below interpreted the authorization to investigate "activities and operations" as meaning actual activities and operations and not internal administrative processes. In so holding the court declined to assume that a routine resolution, with no floor discussion apprising the House of the Subcommittee's contemplated actions, was intended to authorize an unprecedented investigation having the gravest implications for our federal form of government.

Petitioner, however, attacks the decision below as incorrect, advancing three grounds.

1. Petitioner argues (p. 15) that the investigation must be allowed to extend to the internal administration of the Authority because the authorizing resolution permits "full and complete" investigation. But "full and complete"

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* It is significant that in 1952, when a suggestion was made that the Judiciary Committee investigate the operations of the Authority, Chairman Celler himself concluded that "it is questionable whether this Committee would have jurisidiction" *Hearings on H. R. J. Res. 375 Before Subcommittee No. 5 of the House Committee on the Judiciary*, 82d Cong., 2d Sess. 10-11, 98 (1952) (Ward & Paul, Official Reporters).

investigation can only be of the subject authorized, "activities and operations". It cannot enlarge the subject.*

2. Next, Petitioner attempts to evade the court's finding, which it cannot dispute, that when the House adopted the resolution it was not informed as to the kind of investigation contemplated. Petitioner points (pp. 16-17) to a statement of Congressman Brown of the Rules Committee that the Committee had "had explained to it the need for this investigation". The Rules Committee is not the House. It is the House that must authorize the investigation, not the Rules Committee.

Thus, Petitioner asks this Court to sustain a conviction on the basis of a double inference—first, an inference that since the Rules Committee was told something, it must have been told all, and then an inference that whatever the Rules Committee knew the whole House must have known.

The closest thing to an explanation that was given the House (and, for all that appears, the Rules Committee) as to what the Subcommittee proposed to do was the statement by Congressman Brown that the Subcommittee would seek to find out "just how a great many public funds are being expended." 106 Cong. Rec. 11593 (1960). This reference to public funds would naturally be understood by the House to refer to federal funds, which were not involved in the Subcommittee's investigation. More than that, such a reference would not remotely suggest to the House that the Subcommittee intended to investigate the internal decisional processes of the Authority.

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* Petitioner's irrelevant observations (p. 15) as to what might be involved in an investigation relating to the "handling of claims under the Federal Torts Claims Act" merely point up the fact that if you assume a different kind of inquiry, a different legislative history, a different authorization, and a situation in which no state agency is involved and no constitutional question presented, you have a different case.

Petitioner also relies on an offhand remark by a single Congressman not focusing on the scope or depth of any particular investigation but merely reacting to the anxiety of a fellow Congressman as to what interstate compacts might be investigated. During the discussion, the Chairman of the Committee on Interstate and Foreign Commerce mentioned that his Committee had jurisdiction over certain compacts and asked Congressman Smith if H. R. Res. 530 was meant to refer to interstate compacts other than those coming within the jurisdiction of the Judiciary Committee. Congressman Smith's only reply was: "And they are given blanket authority to investigate". 106 Cong. Rec. 11594 (1960). Earlier in the discussion, Congressman Smith had made plain that nothing exceptional was intended by H. R. Res. 530, stating that "inadvertently the resolution [H. R. Res. 27, 86th Cong., 1st Sess., passed on January 27, 1959] failed to include one section of authority of the committee which was the section providing that it might have jurisdiction involving the activities and operations of interstate compacts." 106 Cong. Rec. 11593 (1960).*

It is beyond argument that when the House passed the authorizing resolution it was not told what the Subcommittee intended to do.

3. The petition assumes that the court's interpretation of the House resolution would have been different if no constitutional issues had been presented. There is no basis for the assumption. The court found that the natural meaning of the resolution, and the indicated intention of the House,

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* Moreover, the Committee's authorization to investigate, blanket or otherwise, was limited to "activities and operations." The court below took this to mean actual activities and operations, not internal cerebrations.

was to authorize an investigation of actual activities and operations, not thought processes and internal administration. The court concluded that the House would have been far more explicit had it intended to authorize an investigation so novel and without precedent as the one the Subcommittee attempted. The court was fortified in its conclusion by the fact that constitutional adjudication was avoided.

Petitioner argues (p. 20) that the rule of construction which avoids unnecessary constitutional adjudication applies only where the resolution is "constitutional under one interpretation and of doubtful constitutionality under the other". The argument is made that absence of power to amend or repeal compact consent would make the resolution unconstitutional under any interpretation. What Petitioner overlooks is that the resolution makes no mention of amendment or repeal of compact consent, but merely authorizes an investigation of activities and operations of interstate compacts. The constitutional question reserved by the court below had to do only with the legislative purpose asserted by the Subcommittee—amendment or repeal of the compact consent. This question was not inherent in the resolution but was introduced by what the Subcommittee attempted to do in its formal statement of purpose.

Furthermore, in construing a resolution in such a way as to avoid adjudicating constitutional questions in the case before it, a court need not reach out to determine for future cases the constitutionality of the resolution as construed. In the *Rumely* case, for example, this Court did not hold that one interpretation of the resolution involved was constitutional and another unconstitutional. As here, the Court held only that there was a serious constitutional question; that the Court should abstain from adjudication of the question "unless no choice is left" (345 U. S. at p. 46); and that the Court's interpretation avoided the necessity of such adjudication.

If, as Petitioner contends (p. 21), a determination of the power of Congress to alter or repeal a consent would have affected not only the power of the Subcommittee to demand the documents actually in issue but also its power to demand the many documents produced, there was even more reason to avoid premature constitutional adjudication. If Petitioner is asking the Court to decide the power of Congress to obtain documents of a character already produced by the Authority, it is in effect seeking an advisory opinion on an academic question not at issue in this criminal proceeding.

Finally, Petitioner entirely ignores a major additional constitutional issue referred to by the court below (Pet. App. A. p. 31). Respondent demonstrated that even if the Congress were held to have power to amend or repeal compact consent, an investigation of the internal administrative and decisional processes of a state agency would be barred by the Tenth Amendment. The construction given the resolution by the court below avoided this constitutional question. That construction, therefore, was appropriate even under Petitioner's mistaken statement of the rule of avoidance of constitutional questions.

V.

Reversal of Respondent's conviction would also be required on grounds not decided by the court below.

The insufficiency of the Subcommittee's authorization from the House was only one of numerous legal defects which required reversal of the conviction. Respondent demonstrated in the court below the following additional reasons why the conviction could not stand:

1. The attempted investigation of the Authority had no valid legislative purpose. The stated purpose

was to consider whether Congress should amend or repeal its consent to the Port Authority Compact. This the Congress has no constitutional power to do.

2. Even if Congress had the power to amend or repeal its consent to the Port Authority Compact, the Tenth Amendment would be a bar to a demand for documents relating to the internal administration of a State agency such as the Authority.* The need of Congress to be informed can be fully satisfied without intruding into State decisional and policy-formation processes.

3. The subpoenaed documents were not pertinent to the stated subject matter of the inquiry, and the Subcommittee's explanation to Respondent of their alleged pertinency fell far short of the indisputable clarity necessary for a conviction of criminal contempt. Petitioner demonstrated this below in a point-by-point analysis of the Subcommittee's demands and explanations.

4. Orders of the Governors of New York and New Jersey deprived Respondent of any legal authority to produce the subpoenaed documents. Therefore, Respondent did not "willfully make default" in obeying the orders of the Governors.

5. To hold a subordinate state official in criminal contempt in such circumstances would have the effect of transferring State executive power from the Governor to a subordinate, since the Governor could not even present the State's constitutional objections for a judicial determination unless he could persuade the subordinate to withhold documents at the risk of criminal prosecution. This, in itself, would violate the Tenth Amendment.**

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* The Authority is a state agency. This has been established by at least 16 cases from the lowest federal and state courts up to this Court. No case has ever held to the contrary.

** There has never been any suggestion of disobedience by the Governors of New York or New Jersey or the Authority to any court orders requiring compliance with the Subcommittee's demands.

6. Subject only to two inapplicable exceptions, the offense defined in the contempt statute does not include refusal to produce documents which would be privileged in a court of law.* Many of the documents refused by Respondent were so privileged.

7. Congressional action directed against the Authority merely because of its bi-state character, and applicable to no other state or bi-state agency, would violate the due process clause of the Fifth Amendment.

8. The subpoena issued by the Subcommittee was an unreasonable search in violation of the Fourth Amendment.

9. Respondent was deprived of the right to be informed of the nature and cause of the accusation against him in violation of the Sixth Amendment. The information charging Respondent with criminal contempt was fatally defective under *Russell* v. *United States*, 369 U. S. 749 (1962), since it contained no statement—not one word—as to the subject under inquiry.

The court below found no need to decide any of these additional questions in view of its finding that the Subcommittee lacked House authorization for its demands. In the event that a writ of certiorari should be granted, Respondent will urge affirmance of the decision of the court below on each of the grounds advanced by Respondent in that court.

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* 52 Stat. 942 (1938), 2 U. S. C. §§192, 193 (1958).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

THOMAS E. DEWEY,
EVERETT I. WILLIS,
LINO A. GRAGLIA,
MERTON SARNOFF,
40 Wall Street,
New York 5, N. Y.

SIDNEY GOLDSTEIN,
111 Eighth Avenue,
New York, N. Y.
Attorneys for Respondent.

Dated: October 1, 1962